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Attorneys for Defendant
Christian Paul Rodarte

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHRISTIAN PAUL RODARTE,

Defendant.

CASE NO. 08CR1560-JAH

**NOTICE OF MOTION AND MOTION
FOR DISCOVERY**

**Date: July 21, 2008
Time: 8:30 a.m.**

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND
NICOLE A. JONES, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on Monday, July 21, 2008 at 8:30 a.m. or as soon
thereafter as counsel may be heard, the above named Defendant, by and through
counsel, will present the following Motion for Discovery.

MOTION

Defendant, CHRISTIAN PAUL RODARTE, pursuant to the provisions of Rules 12 and 16 of the Federal Rules of Criminal Procedure, and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and the applicable case law of the United States Supreme Court and the Circuit Courts of the United States, hereby moves for discovery.

This Motion is made and based upon this Notice of Motion, the attached Memorandum of Points and Authorities, all files and records in the above captioned case, and on any matters which may come to this Court's attention prior to or at the time of hearing this motion.

Dated: June 17, 2008

/s/ Alex L. Landon
ALEX L. LANDON

Dated: June 17, 2008

/s/ Mark F. Adams
MARK F. ADAMS
Attorneys for Defendant
Christian Paul Rodarte

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3

4 UNITED STATES OF AMERICA,) Case No. 08CR1560-JAH
5 Plaintiff,)
6 v.) CERTIFICATE OF SERVICE
7 CHRISTIAN PAUL RODARTE,)
8 Defendant.)
9 _____)

10 IT IS HEREBY CERTIFIED THAT:

11 I, Mark F. Adams, am a citizen of the United States and am at least eighteen
12 years of age. My business address is 964 Fifth Avenue, Suite 335, San Diego,
13 California 92101.

14 I am not a party to the above-entitled action. I have caused service of the
15 defense MOTION FOR DISCOVERY on the following parties by electronically filing the
16 foregoing with the Clerk of the United States District Court using its ECF System, which
17 electronically notifies the following individuals:

18 Nicole A. Jones, Attorney for the Government, nicole.jones@usdoj.gov
19

20 I declare under penalty of perjury that the foregoing is true and correct and that
21 this proof of service was executed on June 17, 2008 at San Diego, California.
22

23 /s/ Mark F. Adams
Mark F. Adams
24
25
26
27
28

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Attorney for Defendant
Christian Paul Rodarte

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CASE NO.08CR1560-JAH
)	
Plaintiff,)	POINTS AND AUTHORITIES
)	IN SUPPORT OF MOTION FOR
v.)	DISCOVERY
)	
CHRISTIAN PAUL RODARTE,)	
)	
Defendant.)	DATE: July 21, 2008
)	TIME: 8:30 a.m.

STATEMENT OF FACTS

On April 17, 2008 at approximately 5:30 p.m. United States Border Patrol agents were summoned to the scene of an automobile accident on State Route 94 near the Mountain Empire Campground near Campo, California. Agents discovered a silver four door 2001 Suzuki Esteem sedan which appeared to have hit an oak tree. Two people, one male and one female, were entangled in the wreckage, requiring forcible extraction using metal cutting tools. These two people were pronounced dead at the scene. Six

1 other people, including Christian Paul Rodarte, were found in varying states of injury. All
2 were taken to area hospitals. Mr. Rodarte was found to have suffered various
3 lacerations and bruises and a fractured pelvis. He remains hospitalized.

4 On April 28, 2008 a one count criminal complaint was filed charging Mr. Rodarte
5 with Transportation of Illegal Aliens in violation of Title 8 United States Code § 1324
6 (a)(1)(A)(ii) which section carries the potential for the imposition of the death penalty. [8
7 U.S.C. § 1324 (a)(1)(B)(iv)]. Mr. Rodarte was transported to the United States
8 Courthouse on May 2, 2008 for arraignment and detention hearing. He plead not guilty,
9 agreed to an order of detention without prejudice to revisit the issue of bail, and was
10 appointed the undersigned counsel pursuant to the provisions of 18 U.S.C. § 3599.

11 On May 14, 2008 a twelve count Indictment was returned charging Mr. Rodarte
12 with Transportation of Illegal Aliens Resulting in Death (2 counts); Bringing in Illegal
13 Aliens for Financial Gain (5 counts); and Transportation of Illegal Aliens (5 counts) all in
14 violation of Title 8 U.S.C. §§ 1324 (a)(1)(A)(ii), (a)(1)(B)(iv), (a)(2)(B)(ii), and (a)(1)(A)(ii).
15 On June 17, 2008, Mr. Rodarte entered a not guilty plea to each count of the
16 Indictment. The Court set July 21, 2008 for motion hearing and trial setting.
17

18
19 **THE DEFENDANT REQUESTS ALL DISCOVERY IN**
20 **POSSESSION OF THE GOVERNMENT**

21 Mr. Rodarte specifically requests the following items of discovery. This request
22 is not limited to those items that the prosecutor knows of, but rather includes all
23 discovery listed below that is in the custody, control, care, or knowledge of any "closely
24 related investigative [or other] agencies" under *United States v. Bryan*, 868 F.2d 1032
25 (9th Cir. 1989):

26 (1) The Defendant's Statements. Under Fed. R. Crim. P. 16 (a)(1)(A) the
27 defendant is entitled to disclosure of all copies of any written or recorded statements
28

1 made by the defendant; the substance of any statements made by the defendant which
2 the government intends to offer in evidence at trial; any recorded testimony of the
3 defendant before the grand jury; any response by the defendant to interrogation; the
4 substance of any oral statements which the government intends to introduce at trial,
5 and any written summaries of the defendant's oral statements contained in the
6 handwritten notes of the government agent; any response to any *Miranda* warnings
7 which may have been given to the defendant (See *United States v. McElroy*, 697 F.2d
8 459 (2d Cir. 1982)); and any other statements by the defendant that are discoverable
9 under Fed. R. Crim. P. 16(a)(1)(A). The Advisory Committee Notes as well as the 1991
10 amendments to Rule 16 make it clear that the Government must reveal all the
11 defendant's statements, whether oral or written regardless of whether the Government
12 intends to introduce those statements;

13 (2) Arrest Reports, Notes and Dispatch Tapes. The defendant also specifically
14 requests that all arrest reports, notes and dispatch or any other tapes that relate to the
15 circumstances surrounding his arrest or any questioning, if such reports have not
16 already been produced in their entirety, be turned over to him. This request includes,
17 but is not limited to, any rough notes, records, reports, transcripts or other documents in
18 which statements of the defendant or any other discoverable material is contained.
19 This is all discoverable under Fed. R. Crim. P. 16(a)(1)(A) and *Brady v. Maryland*, 373
20 U.S. 83 (1963). See also *United States v. Johnson*, 525 F.2d 999 (2d Cir. 1975);
21 *United States v. Lewis*, 511 F.2d 798 (D.C. Cir. 1975); *United States v. Pilnick*, 267 F.
22 Supp. 791 (S.D.N.Y. 1967); *Loux v. United States*, 389 F.2d 911 (9th Cir. 1968). Arrest
23 reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn
24 statements, and prosecution reports pertaining to the defendant are available under
25 Fed. R. Crim. P. 16(a)(1)(B), Fed. R. Crim. P. 26.2 and 12(l);
26

27 (3) Reports of Scientific Tests or Examinations. Pursuant to Fed. R. Crim. P.
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1 16(a)(1)(F), the accused requests the reports of all tests and examinations conducted
2 upon the evidence in this case, including any fingerprint testing which is known, or by
3 the exercise of due diligence may become known, to the attorney for the government,
4 and which is material to the preparation of the defense or are intended for use by the
5 government as evidence in chief at the trial;

6 (4) *Brady* Material. The defendant requests all documents, statements, agents'
7 reports, and tangible evidence favorable to the defendant on the issue of guilt and/or
8 which affects the credibility of the government's case. Impeachment as well as
9 exculpatory evidence falls within *Brady's* definition of evidence favorable to the
10 accused. *United States v. Bagley*, 473 U.S. 667 (1985); *United States v. Agurs*, 427
11 U.S. 97 (1976);

12 (5) Any Information that May Result in a Lower Sentence under the advisory
13 United States Sentencing Guidelines (U.S.S.G.). As discussed above, this information
14 is discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963). This request includes
15 any information that could affect any base offense level or any potential specific offense
16 characteristic under Chapter Two of the U.S.S.G. Also included in this request is any
17 information relevant to a Chapter Three adjustment, a determination of the defendant's
18 criminal history, or any other application of the U.S.S.G.;

19 (6) The Defendant's Prior Record. Evidence of prior record is available under
20 Fed. R. Crim. P. 16(a)(1)(D);

21 (7) Any Proposed 404(b) Evidence Evidence of prior similar acts is discoverable
22 under Fed. R. Evid. 404(b) and 609. In addition, under Fed. R. Evid. 404(b), "upon
23 request of the accused, the prosecution . . . shall provide reasonable notice in advance
24 of trial . . . of the general nature . . ." of any evidence the government proposes to
25 introduce under Fed. R. Evid. 404(b) at trial. The defendant requests that such notice
26 be given well in advance of trial in order to give the defense time to adequately
27

1 investigate and prepare for trial;

2 (8) Evidence Seized. Evidence seized as a result of any search, either
3 warrantless or with a warrant, is discoverable under Fed. R. Crim. P. 16(a)(1)(E);

4 (9) Request for Preservation of Evidence. The defendant specifically requests
5 that all physical evidence, notes, reports, records, and other things which may be
6 destroyed, lost, or otherwise put out of the possession, custody, or care of the
7 government and which relate to the investigation and/or arrest or the events leading to
8 the arrest in this case be preserved. This request includes, but is not limited to, any
9 samples used to run any scientific tests, any narcotics, and any evidence, including
10 reports of interviews, seized from any third party. It is requested that the government
11 be ordered to question all the agencies and individuals involved in the prosecution and
12 investigation of this case to determine if such evidence exists, and if it does exist, to
13 inform those parties to preserve any such evidence;

14 (10) Tangible Objects The defendant requests, under Fed. R. Crim. P.
15 16(a)(1)(E), the opportunity to inspect and copy as well as test, if necessary, all other
16 documents and tangible objects, including photographs, books, papers, documents,
17 photographs of building or places or copies of portions thereof which are material to the
18 defense or intended for use in the government's case-in-chief, or were obtained from or
19 belong to the defendant;

20 (11) Evidence of Bias or Motive to Lie. The defendant requests any evidence
21 that any prospective government witness is biased or prejudiced against the defendant,
22 or has a motive to falsify or distort his or her testimony. *Pennsylvania v. Ritchie*, 480
23 U.S. 39 (1987); *United States v. Striffler*, 851 F.2d 1197 (9th Cir. 1988);

24 (12) Impeachment Evidence. The defendant requests any evidence that any
25 prospective government witness has engaged in any criminal act, whether or not
26 resulting in a conviction, and whether any witness has made a statement favorable to
27

1 the defendant. See Fed. R. Evid. 608, 609 and 613. Such evidence is discoverable
2 under *Brady v. Maryland*, supra. See, *United States v. Striffler*, 851 F.2d 1197 (9th Cir.
3 1988) (witness' prior record); *Thomas v. United States*, 343 F.2d 49 (9th Cir. 1965)
4 (evidence that detracts from a witness' credibility);

5 (13) Evidence of Criminal Investigation of Any Government Witness. The
6 defendant requests any evidence that any prospective witness is under investigation by
7 federal, state or local authorities for any criminal conduct. *United States v. Chitty*, 760
8 F.2d 425 (2d Cir.) cert. denied, 474 U.S. 945 (1985);

9 (14) Evidence Affecting Perception, Recollection, Ability to Communicate, or
10 Truth Telling. The defense requests any evidence, including any medical or psychiatric
11 report or evaluation, tending to show that any prospective witness' ability to perceive,
12 remember, communicate, or tell the truth is impaired; and any evidence that a witness
13 has ever used narcotics or other controlled substance, or has ever been an alcoholic.
14 *United States v. Striffler*, 851 F.2d 1197 (9th Cir. 1988); *Chavis v. North Carolina*, 637
15 F.2d 213, 224 (4th Cir. 1980);

16 (15) Witness Addresses. The defendant requests the name and last known
17 address of each prospective government witness. See *United States v. Napue*, 834
18 F.2d 1311 (7th Cir. 1987); *United States v. Tucker*, 716 F.2d 576 (9th Cir. 1983) (failure
19 to interview government witnesses by counsel is ineffective); *United States v. Cook*,
20 608 F.2d 1175, 1181 (9th Cir. 1979) (defense has equal right to talk to witnesses). The
21 defendant also requests the name and last known address of every witness to the
22 crime or crimes charged (or any of the overt acts committed in furtherance thereof) who
23 will not be called as a government witness. *United States v. Cadet*, 727 F.2d 1453 (9th
24 Cir. 1984);

25 (16) Name of Witnesses Favorable to the Defendant. The defendant requests
26 the name of any witness who made an arguably favorable statement concerning the
27

1 defendant or who could not identify him or who was unsure of her identity, or
2 participation in the crime charged. *Jackson v. Wainwright*, 390 F.2d 288 (5th Cir.
3 1968); *Chavis v. North Carolina*, 637 F.2d 213, 223 (4th Cir. 1980); *Jones v. Jago*, 575
4 F.2d 1164, 1168 (6th Cir.), cert. denied, 439 U.S. 883 (1978); *Hudson v. Blackburn*, 601
5 F.2d 785 (5th Cir. 1979), cert. denied, 444 U.S. 1086 (1980);

6 (17) Statements Relevant to the Defense. The defendant requests disclosure of
7 any statement that may be "relevant to any possible defense or contention" that he
8 might assert. *United States v. Bailleaux*, 685 F.2d 1105 (9th Cir. 1982). This request
9 also includes any evidence of mitigation, including but not limited to those mitigation
10 factors identified at 18 U.S.C. §3592(a);

11 (18) Jencks Act Material. The defense requests all material to which defendant
12 is entitled pursuant to the *Jencks Act*, 18 U.S.C. § 3500, reasonably in advance of trial,
13 including witness statements of absolutely any kind. A verbal acknowledgment that
14 "rough" notes constitute an accurate account of the witness' interview is sufficient for
15 the report or notes to qualify as a statement under §3500(e)(1). *Campbell v. United*
16 *States*, 373 U.S. 487, 490-92 (1963). In *United States v. Boshell*, 952 F.2d 1101 (9th
17 Cir. 1991), the Ninth Circuit held that when an agent goes over interview notes with the
18 subject of the interview the notes are then subject to the Jencks Act. The defense
19 requests pre-trial production of Jencks material to expedite cross-examination and to
20 avoid lengthy recesses during trial;

21 (19) Giglio Information. Pursuant to *Giglio v. United States*, 405 U.S. 150
22 (1972), the defendant requests all statements and/or promises, express or implied,
23 made to any government witnesses, in exchange for their testimony in this case, and all
24 other information which could arguably be used for the impeachment of any
25 government witnesses;

26 (20) Personnel Records of Government Officers Involved in the Arrest and
27
28

1 Investigation. The defendant requests all citizen complaints and other related internal
2 affairs documents involving any of the law enforcement officers who were involved in
3 the investigation, arrest and interrogation of him, pursuant to *Pitchess v. Superior Court*,
4 11 Cal. 3d 531, 539 (1974). Because of the sensitive nature of these documents,
5 defense counsel will not be able to procure them from any other source;

6 (21) Government Examination of Law Enforcement Personnel Files. The
7 accused requests that the government examine the personnel files and any other files
8 within its custody, care or control, or which could be obtained by the government, for all
9 testifying witnesses, including testifying officers. The defense requests that these files
10 be reviewed by the government attorney for evidence of perjurious conduct or other like
11 dishonesty, or any other material relevant to impeachment, or any information that is
12 exculpatory, pursuant to its duty under *United States v. Henthorn*, 931 F.2d 29 (9th Cir.
13 1991). The obligation to examine files arises by virtue of the defense making a demand
14 for their review: the Ninth Circuit in *Henthorn* remanded for in camera review of the
15 agents' files because the government failed to examine the files of agents who testified
16 at trial. This Court should therefore order the government to review all such files for all
17 testifying witnesses and turn over any material relevant to impeachment or that is
18 exculpatory to Mr. Rodarte prior to trial. Mr. Rodarte specifically requests that the
19 prosecutor, not the law enforcement officers, review the files in this case. The duty to
20 review the files, under *Henthorn*, should be the prosecutor's and not the officers'. Only
21 the prosecutor has the legal knowledge and ethical obligations to fully comply with this
22 request;
23

24 (22) Expert Summaries. Written summaries of all expert testimony that the
25 government intends to present under Federal Rules of Evidence 702, 703 or 705 during
26 its case in chief, written summaries of the bases for each expert's opinion, and written
27 summaries of the experts' qualifications. Fed. R. Crim. P. 16(a)(1)(G). This request
28

1 includes but is not limited to expert testimony regarding the chemical composition of the
2 substances seized in this case, expert testimony on the value of the purported illegal
3 drugs seized in this case, fingerprint expert testimony, structure or organization
4 evidence, code speak evidence, and drug courier or other profile expert testimony; and,

5 (23) Agreements Between the Government and Witnesses. The defendant
6 requests discovery regarding any express or implicit promise, understanding, offer of
7 immunity, of past, present, or future compensation, or any other kind of agreement or
8 understanding, including any implicit understanding relating to criminal or civil income
9 tax, forfeiture or fine liability, between any prospective government witness and the
10 government (federal, state and/or local). This request also includes any discussion with
11 a potential witness and/or his counsel about or advice concerning any immigration
12 benefits, any contemplated prosecution, or any possible plea bargain, even if no
13 bargain was made or the advice not followed.

14 **III.**

15 **CONCLUSION**

16 For the forgoing reasons, and based upon the argument of counsel, Defendant
17 Christian Paul Rodarte, requests forthwith production of all discovery.
18

19 Dated: June 17, 2008

20 /s/ Alex L. Landon
ALEX L. LANDON

21
22
23 Dated: June 17, 2008

24 /s/ Mark F. Adams
MARK F. ADAMS
Attorneys for Defendant
25 **Christian Paul Rodarte**
26